

CHAPTER 58**VICTIMS OF ABUSE-RETIREMENT-ELIGIBLE MEMBERS****5801 BACKGROUND**

Public Law 102-484, section 653 (reference (fh)) authorizes various benefits for the spouses and former spouses of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have had if there had been no abuse and the member had retired under normal circumstances.

5802 DEFINITIONS

580201. The definitions in 10 U.S.C. 1408 (reference (c)), Former Spouse Payments From Retired Pay, which are found in Chapter 29 of this volume, apply to this chapter unless otherwise noted.

580202. Dependent Child. Dependent child means an unmarried legitimate child, including an adopted child or stepchild of the member or former member who is:

A. Under 18 years of age;

B. Incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

C. Enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for these purposes, under 23 years of age and dependent on the member or former member for over one-half of the child's support.

5803 ELIGIBILITY

580301. The DFAS will pay the eligible spouse or former spouse under the following conditions:

A. A court order stipulates (in the same manner applicable to division of property) the payment of an amount from the disposable retired pay of a member or former member to the spouse or former spouse. The court order must satisfy the requirements of 10 U.S.C. 1408(a)(2) (reference (c)). Generally, the court order must be a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court-ordered, ratified, or approved property settlement incident to such a decree; and it must specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

B. A member or former member, while a member of the Armed Forces and after becoming eligible to be retired from the Armed Forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of the spouse or dependent child. The eligibility of the member to receive retired pay as determined by the Secretary concerned is considered terminated effective upon the approval of the court-martial sentence terminating retired pay eligibility; and

C. The spouse or former spouse

1. Was the victim of the abuse and was married to the member or former member at the time of that abuse; or

2. Is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and

D. The spouse or former spouse to whom payments are to be made was married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay.

E. If the punishment that results in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in termination of eligibility, benefits to the eligible dependent under this chapter that are based on the punishment so vacated, set aside, or mitigated shall cease. Such benefits cease effective on the first day of the first month after the month the Secretary of the Military Department concerned notifies the recipient, in writing, that benefits cease. The recipient may not be required to repay the benefits received before that effective date, excluding any erroneous payments.

5804 APPLICATION FOR PAYMENT

An eligible spouse or former spouse must apply for payment from the supporting DFAS Center, in the same manner as an application for former spouse payments from retired pay, set out in Chapter 29 of this volume.

5805 METHOD OF PAYMENT

580501. The Secretary of the Military Department concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of that date of certification (that is, including any cost-of-living increases to retired pay through the date of certification):

A. If the member or former member's eligibility for retired pay had not been terminated; and

B. If, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

580502. When certifying retired pay of a member separated for misconduct involving abuse of a dependent, the Secretary concerned shall ignore reductions in grade and forfeitures of pay or retired pay resulting from the administrative separation or court-martial resulting from the misconduct.

580503. The amount certified by the Secretary concerned shall be deemed to be the disposable retired pay of the member for the purposes of this provision. The total amount payable under this provision may not exceed 50 percent of such disposable retired pay.

580504. A court order may provide that, whenever retired pay is increased under 10 U.S.C. 1401a (reference (c)) (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member shall be increased at the same time and by the percent by which retired pay would have increased if the member or former member were receiving retired pay.

580505. Payments shall not be made more frequently than once a month.

580506. The effective date for computing retired pay shall be the date that the sentence terminating eligibility for retired pay is approved by the appropriate official.

580507. Payments terminate under the terms of the applicable court order, but not later than the date of the death of the member or former member or the date of death of the spouse or former spouse to whom payments are being made, whichever occurs first.

580508. Payments made to an eligible spouse on the basis of being the natural or adopted parent of a dependent child who was the victim of abuse shall not cease solely because the dependent child is no longer considered a dependent child; that is, payment requires only that the child was dependent at the time of the abuse, and not necessarily at the time of payment.

580509. If a former spouse who is receiving payments under these conditions marries again after the payments begin, his or her eligibility to receive further payments terminates on the date of the marriage. In the event of termination of that marriage by death, annulment or divorce, payments resume as of the first day of the month in which the marriage is terminated. The monthly amount shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

580510. Payments shall be made from funds in the Department of Defense Military Retirement Trust Fund.

580511. A spouse or former spouse, while receiving payments under this chapter, is entitled to medical, dental, commissary, exchange, and other benefits as though the member or former member were entitled to retired pay.

580512. A dependent child, who was a member of the household of the member or former member at the time of the misconduct, is entitled to medical, dental, commissary, exchange and other benefits as though the member or former member were entitled to retired pay.

580513. No payments under this chapter accrue for periods before October 23, 1992.

580514. Tax liability for payments under this chapter is the responsibility of the spouse or former spouse who receives the payments.